United Nations

AT

Administrative Tribunal

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AT/DEC/710
28 July 1995

ENGLISH
ORIGINAL: FRENCH

ADMINISTRATIVE TRIBUNAL

Judgement No. 710

Case No. 779: KHALIDI ET AL

Against: The Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East

THE UNITED NATIONS ADMINISTRATIVE TRIBUNAL,

Composed of: Mr. Samar Sen, Vice-President, presiding; Mr. Hubert Thierry; Mr. Francis Spain;

Whereas, on 31 January 1994, Rasmiyeh Mahmoud Abu Gheida, Nariman Salim Khalidi, Nahla Ibrahim Khatib, Nadia Tewfiq Madi, Bedayah Bashir Murad and Muti'a Mohammed Saleh, all area staff members of the United Nations Relief and Works Agency for Palestine Refugees in the Near East, hereinafter referred to as UNRWA, filed an application containing the following pleas:

"SECTION II PLEAS

Applicants respectfully pray the esteemed Tribunal to hold the following decisions:

1. Rescinding the decision of the Commissioner-General comprised in ...

2. Considering the Applicants' period of service under X category as

period of service qualifying for termination indemnity.

3. Applying the United Nations operational rate of exchange of US$ 1 = LS[Syrian pounds] 11.20 for the purpose of payment of termination indemnity due to the Applicants for the periods prior to 30 May 1992.

4. Warranting the Applicants to opt for early voluntary retirement at the age of 50 years, or at having 25 years of qualifying service.

5. Applying the UN operational rate of exchange prevailing during every given period of time of qualifying service after 30 May 1992, on the basis of salary on termination.

6. Payment of legal counselling and secretarial fees estimated at US$ 2,000."

Whereas the Respondent filed his answer on 23 June 1994;

Whereas the Applicants filed written observations on 31 August 1994;

Whereas the Applicants filed an additional document on 24 June 1995;

Whereas the Tribunal put questions to the Respondent on 10 July 1995, to which the Respondent replied on 13 July 1995 and on which the Applicants submitted comments on 15 and 17 July 1995;

Whereas, on 18 July 1995, the Respondent filed additional comments;

Whereas, on 25 July 1995, the Applicants filed additional comments;

Whereas the facts in the case are as follows:

The Applicant Abu Gheida was recruited by UNRWA as a teacher grade 05 (category X) on 23 September 1965 under a fixed-term contract which expired on 31 August 1967.

The Applicant was subsequently re-employed as a teacher on a temporary assistance basis from 10 to 31 October 1967. On 1 November 1967, the Applicant was given a fixed-term appointment expiring on 31 August 1968.

The Applicant was again re-employed as a teacher for a fixed term from 1 September 1968 to 31 August 1969. Her appointment was then extended until 31 August 1970 and was subsequently converted to a temporary-indefinite appointment, with a category change from category X to category A, beginning 1 September 1969, which was considered her service computation date.

The Applicant Khalidi was recruited by UNRWA as a teacher grade 05 (category X) on 13 October 1965 under a fixed-term contract which expired on 31 August 1967.

The Applicant was subsequently re-employed as a teacher on a temporary assistance basis from 10 to 31 October 1967. On 1 November 1967, the Applicant was given a fixed-term appointment expiring on 31 August 1968.

The Applicant was again re-employed as a teacher for a fixed term from 1 September 1968 to 31 August 1969. Her appointment was then extended until 31 August 1970 and was subsequently converted to a temporary-indefinite appointment, with a category change from category X to category A, beginning 1 September 1969, and her service computation date was fixed at 1 September 1968.

The Applicant Khatib was recruited by UNRWA as a teacher grade 05 (category X) on 21 September 1965 under a fixed-term contract which expired on 31 August 1967.

The Applicant was subsequently re-employed as a teacher on a temporary assistance basis from 30 September to 31 October 1967. On 1 November 1967, the Applicant was given a fixed-term appointment expiring on 31 August 1968.

The Applicant was again re-employed as a teacher for a fixed term on 1 September 1968. Her appointment was subsequently converted to a temporary-indefinite appointment, with a category change from category X to category A, beginning 1 September 1969, and her service computation date was fixed at 1 September 1968.

The Applicant Madi was recruited by UNRWA as a teacher at grade 05 (category X) on 28 September 1965 under a fixed-term contract which expired on 31 August 1967.

The Applicant was subsequently re-employed as a teacher on a temporary assistance basis from 10 to 31 October 1967. On 1 November 1967, the Applicant was given a fixed-term appointment expiring on 31 August 1968.

The Applicant was again re-employed as a teacher for a fixed term from 1 September 1968 to 31 August 1969. Her appointment was subsequently converted to a temporary-indefinite appointment, with a category change from category X to category A, retroactive to 1 September 1968, which was considered her service computation date.

The Applicant Murad was recruited by UNRWA as a teacher grade 05 (category X) on 25 September 1965 under a fixed-term contract which expired on 31 August 1967.

The Applicant was subsequently re-employed as a teacher on a temporary assistance basis from 9 to 31 October 1967. On 1 November 1967, the Applicant was given a fixed-term appointment. She left UNRWA service on 31 August 1968.

The Applicant was again re-employed as a teacher for a fixed term on 1 September 1968, which was considered her service computation date.

The Applicant Saleh was recruited by UNRWA as a teacher grade 05 (category X) on 22 September 1965 under a fixed-term contract which expired on 31 August 1967.

The Applicant was subsequently re-employed as a teacher on a temporary assistance basis from 13 September to 19 October 1967 and from 21 to 31 October 1967. The Applicant was given a fixed-term appointment from 1 November 1967 to 31 August 1968.

The Applicant was again re-employed as a teacher for a fixed term on 1 September 1968. Her appointment was then converted to a temporary-indefinite appointment, with a category change from category X to category A, retroactive to 1 September 1968, which was considered her service computation date.

On 18 February 1991, the Applicant Khalidi wrote to the Regional Director to request that her service computation date be moved back from 1 September 1968 to 13 January 1965. In a reply dated 11 March 1991, the Acting Regional Director rejected her request on the grounds that she had not, at the time the offer had been available to her, exercised the option which the Administration had offered to staff in the circular dated 30 June 1980 to include prior service for the purpose of establishing the service computation date.

On 5 January 1992, the Administration issued circular No. 17/92, designed to enable Syrian area staff who had completed 25 years of service or had reached the age of 50 to submit an application before 6 February 1992 to exercise a voluntary early retirement option as from 29 February 1992 and to have their retirement pensions computed at the United Nations operational rate of exchange, which was one United States dollar to 11.20 Syrian pounds.

On 24 January 1993, the Applicants Abu Gheida, Khatib, Madi, Murad and Saleh and, on 18 February 1993, the Applicant Khalidi, wrote to the Regional Director requesting that their earlier periods of service be taken into account and that the official United Nations exchange rate (US$ 1 to SL 11.20) be applied to them.

In replies dated 25 January and 11 February 1993, the Director of UNRWA Affairs informed the Applicants of the following:

> "1. We have investigated the claims made in your letter of 24 January 1993. On 21 January 1980, the administration issued a circular to all concerned staff members stating:
>
> > 'In paragraph 7 of Annex 5 of the Memorandum of Understanding dated 23 October 1979, the Agency agreed to recognize prior daily-paid service (without a significant break in service) for purposes of calculating separation benefits provided that the staff members involved repay the Agency any separation benefits received in respect of their earlier service at the time of conversion of their service from daily-paid to monthly-paid manning table

service. This agreement applies as from 9 November 1979, the date of signing of the Memorandum of Understanding, and shall apply to any staff who left the Agency's service after that date but prior to the implementation of this agreement.

Staff members who have not already submitted to Field Personnel Officer a claim for recognition of such service and who think they are entitled to make such a claim should do so before 28 February 1980 giving details of the period of service they wish to have recognized. Claims received after 28 February 1980 will normally be rejected.'

2. Many staff members at that time accepted the offer. According to our records, you did not apply to have your prior service recognized. ..."

The Applicants Khalidi, Khatib and Madi filed appeals before the Area Staff Joint Appeals Board on 22 February 1993. The Applicant Abu Gheida filed her appeal on 1 March 1993, and the Applicant Murad filed an appeal on 9 March 1993. The Board adopted its reports on these cases in October 1993. Its recommendation regarding this group of cases is as follows:

"V. Recommendation

... In view of the foregoing, and without prejudice to any further oral or written submissions to any party that the Appellant may deem pertinent, the Board unanimously makes its recommendation to uphold the Administration's decision not to recognize the Appellant's earlier UNRWA service prior to her re-appointment effective 1 September 1968 for purposes of qualifying service under Area staff rule 109.2 and SAR staff circular No. 17/92; and that the case be dismissed.

However, with a view to the possibility that the Appellant might not have been notified of the staff circular of 30 June 1980, particularly in the absence of documented evidence to that effect, the Board also wishes to recommend that the Appellant's case be given further consideration by the Administration."

On 15 November 1993, the Officer-in-Charge, Headquarters, forwarded to the Applicants a copy of the report of the Joint Appeals Board informing them of the following:

"You will note that the Board concluded that the Administration dealt with your case within the framework of standing rules and directives concerning employment, early voluntary retirement, and service computation date without allowing any extraneous or unrelated factors to affect its decision. Based on this conclusion, the Board unanimously makes its recommendation to uphold the Administration's decision not to recognize your earlier UNRWA service prior to your re-appointment effective 1 September 1968 for purposes of qualifying service under Area staff rule 109.2 and SAR staff circular No. 17/92, and that your case be dismissed. However, with a view to the possibility that you might not have been notified of the Staff Circular of 30 June 1980, in which staff members were invited to exercise the option to include their prior service for the purpose of establishing a service computation date, the Board also recommends that your case be given further consideration by the Administration.

I accept the conclusion of the Board concerning the proper manner in which the Administration dealt with your case, and based upon this conclusion, the Board's recommendations concerning non-recognition of your prior UNRWA service for the purposes stated, and dismissal of your case. As to the Board's further recommendation, having taken into account the Board's request for 'further consideration', I do not find any justification to vary the Administration's decision, which the Joint Appeals Board has unanimously recommended should be upheld."

On 31 January 1994, the Applicants filed with the Tribunal the application referred to above.

Whereas the Applicants' principal contentions are:

1. The Administration's refusal to recognize the period of service prior to the Applicants' re-appointment as qualifying service for early retirement was incompatible with the definition set forth in the Staff Regulations and Rules.

2. The Applicants were not aware of the option offered to the staff in 1980 regarding the opportunity to have their re-appointment converted to reinstatement so that their prior service could be taken into account for the purpose of computing their qualifying service for early retirement.

3. The Respondent should not have denied the Applicants their right to opt for early retirement under the terms of circular 17/92 of 5 January 1992, even if they have not complied with the time-limits set in that circular.

4. The Respondent violated the acquired rights of the Applicants by changing the exchange rate used to calculate their retirement benefits.

Whereas the Respondent's principal contentions are:

1. The method used by the Administration to compute the period of service for purposes of determining entitlement to retirement benefits was in conformity with the Staff Regulations and Rules and Personnel Directives.

2. The method was in conformity with personnel directive A/4, which stipulates that in the case of re-appointment, as contrasted with reinstatement, the staff member is not required to repay the separation payments which he received at the time of his earlier separation. The service computation date is the same as the date of re-appointment.

3. The Applicants' failure to file their applications within the time-limits set by circular 17/92, for which no explanation was provided, was their own fault.

4. The concept of acquired rights does not apply to statutory terms of employment, which include the establishment of an exchange rate for the Organization.

The Tribunal, having deliberated from 10 to 28 July 1995, now pronounces the following judgement:

I. The applications filed by Ms. Khalidi, Ms. Abu Gheida, Ms. Khatib, Ms. Madi, Ms. Murad and Ms. Saleh all have the same purpose and are based on the same arguments. The Tribunal therefore orders the joinder of these applications and will rule on them in a single judgement.

II. The applications were made on the basis of circular No. 17/92 of 5 January 1992 issued by the Director of UNRWA Affairs in the Syrian Arab Republic in view of a change in the organization's exchange rate (UNRWA book rate). Owing to the fact that this new book rate, as compared with the previous rate, would be disadvantageous to staff members, those who had reached 50 years of age or completed 25 years of service were given the opportunity to opt for early retirement and receive benefits at the more favourable exchange rate.

The Applicants did not take advantage of this offer within the required time-limit (before 29 February 1992), because they did not have 25 years of service, i.e. qualifying service, computed from the date of entry into service, referred to as the "service computation date". In fact, in September 1968 the Applicants were given fixed-term contracts which were taken into consideration for the purpose of determining their date of entry into service. Those contracts were subsequently converted into temporary-indefinite contracts.

III. However, between September and October 1965 and 31 August 1967, the Applicants had already been employed by UNRWA under category X fixed-term (monthly-paid service). Upon the expiration of those contracts, they received the separation benefits provided for in the Rules. They were then re-employed in November 1967 until August 1968 and they received, as in the past, separation benefits corresponding to that period of service.

IV. Under the terms of a circular issued on 21 January 1980 (personnel directive A/4), complemented by a circular of 30 June 1980 (A/81/80), UNRWA staff members who had previously been employed in category X were given the opportunity to include their years of service prior to their re-employment when computing their qualifying service, on condition that they repaid the separation benefits received in respect of those prior periods of employment.

V. The Applicants did not take advantage of this option and claim either to have had no knowledge of the relevant circulars or to have been inadequately informed of their content. Moreover, they contest that the circulars were applicable to them since they concerned staff members whose service had been interrupted for a period of more than 12 months, which was not their case.

The Applicants are therefore requesting that they be allowed to take advantage of the offer made in circular 17/92 of 5 January 1992 to have their years of service from 1965 to 1968 included, a posteriori, in computing their qualifying service.

VI. The Respondent notes that the Applicants failed to accept the offer made in the relevant 1980 circulars. The Respondent also points out that in 1968 they were re-appointed, not reinstated, which would have entailed the repayment of separation benefits and the readjustment of their service computation date. That date would have been set at the beginning of their employment by virtue of their category X contracts.

Lastly, the Respondent maintains that if the 1980 circulars did not apply to the Applicants, they would have no right to include their service prior to their re-appointment and the UNRWA Administration would be under no obligation to offer them that option. However, the Respondent adds that he considers that the circulars did indeed apply to them.

VII. The Tribunal was satisfied with the information provided by the Respondent at its request concerning the publicity of the circulars issued in 1980 and noted that a significant number of staff members (215) had taken advantage of the offer made in those circulars. Consequently, the Tribunal cannot accept the Applicants' contention that they were not properly informed.

VIII. On the other hand, if one accepts that the 1980 circulars did not apply to the Applicants, it appears that in any event, they had not met the requirement for reinstatement,

namely the repayment of separation benefits received for their periods of employment prior to 1968.

IX. Lastly, the Tribunal does not allow that the Applicants had any acquired right to the application of the previous UNRWA rate after 1 June 1992 (date of the entry into force of the new operational exchange rate).

X. For all of the foregoing reasons, the application is rejected.

(Signatures)

Samar SEN
Vice-president, presiding

Hubert THIERRY
Member

Francis SPAIN
Member

Geneva, 28 July 1995

R. Maria VICIEN-MILBURN
Executive Secretary

United Nations **AT**

Administrative Tribunal

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ENGLISH
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ADMINISTRATIVE TRIBUNAL

Judgement No. 711

Case No. 765: TECKLE-MARIAM

Against: The Secretary-General of the United Nations

THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,

Composed of Mr. Luis de Posadas Montero, Vice-President, presiding; Mr. Mikuin Leliel Balanda; Mr. Hubert Thierry;

Whereas, on 21 December 1992 and 21 February, 5 May and 23 July 1993, Desta Tekle-Mariam Walelign, a former staff member of the United Nations Economic Commission for Africa (hereinafter referred to as ECA), filed an application that did not fulfil all the formal requirements of article 7 of the Rules of the Tribunal;

Whereas, on 11 October 1993, the Applicant, after making the necessary corrections, again filed an application, the pleas of which read as follows:

"*PLEAS*:

The appeal by the appellant is based on ARTICLE 7, Annex I, against the Administrative decision of the Secretary-General contained in letter dated November 23, 1992, given in support of ECA rejection of appellant's declared 'Date of Birth Certificate Correction' and the inconsistent report of the *Panel of the Joint*

Appeals Board No. 964, containing no recommendation but rather supporting Respondent's Statement of 23 July 1992 say the Secretary-General of the United Nations - addressed to the Board ..."

Whereas the Respondent filed his answer on 7 December 1993;

Whereas the Applicant filed written observations on 6 January 1994;

Whereas the Applicant submitted additional documents on 26 March 1994;

Whereas the facts in the case are as follows:

The Applicant entered the service of ECA on 1 July 1964, on a short-term appointment for six months as a Messenger at the GS-2 level. On 1 October 1965, after a series of short-term appointments, the Applicant was granted a one-year fixed-term appointment, which was extended for six months. On 1 April 1967, the Applicant was granted a probationary appointment, which was converted to a regular appointment on 1 July 1968. With effect from 1 May 1970, the Applicant was promoted to the GS-3 level as a Clerk/Messenger. He served as a Documents Clerk with effect from 1 January 1973, and was promoted to the GS-4 level with effect from 1 August 1974. The Applicant resigned on 31 August 1990.

In a Personnel Action Form issued on 9 July 1964, to implement the Applicant's first appointment, his date of birth was registered as 3 October 1941. All subsequent Personnel Action Forms issued through 15 April 1975 indicate this date as the Applicant's date of birth. Other official United Nations forms indicate the Applicant's date of birth as 14 October 1941, 3 November 1941 and 11 November 1941.

On 16 April 1987, the City Council of Addis Ababa issued a birth certificate on which the Applicant's date of birth is given as 4 December 1927. According to the record, this birth certificate was obtained by the Applicant in response to requests from the ECA Administration for verification of his date of birth. On 21 April 1987, the Applicant

submitted this birth certificate to the Personnel Section of ECA. Subsequently, the Administration informed the Applicant that his request to have the United Nations records of his date of birth changed could not be granted.

On 25 June 1987, and again on 10 August 1987, the Applicant requested the United Nations Joint Staff Pension Fund (UNJSPF) to change the date of his birth. In a reply dated 15 October 1987, the UNJSPF Secretary informed the Applicant that "since the ECA had refused to accept the new date of birth the Fund is in no position to do otherwise".

On 21 February 1988, the Applicant lodged an appeal with the Joint Appeals Board (JAB). On 18 April 1988, he requested the Secretary-General, *inter alia*, to review the correspondence he had had with ECA and UNJSPF and to allow him "to be retired on pension". In a reply dated 10 May 1988, the Assistant Secretary-General, Office of Human Resources Management (OHRM), informed the Applicant that, in accordance with administrative policy, "requests for change of date of birth cannot be accepted unless the request was submitted within two years after the date of appointment", and that for purposes of United Nations entitlements, "your date of birth will be considered as 3 October 1941".

In a letter dated 6 February 1990, the Applicant again requested the Assistant Secretary-General, OHRM, to change his date of birth to correspond to his birth certificate. In a reply dated 7 September 1990, the Director of the Staff Administration and Training Division, OHRM, recalled the Applicant's prior request for administrative review of the same decision, and noted that the Applicant had not submitted an appeal to the JAB within the time-limits of staff rule 111.2 (a) (i). He noted that the JAB could waive these limits in exceptional circumstances and suggested that, if he wished to pursue the appeal, the Applicant should address himself to the JAB "indicating the exceptional circumstances which prevented you from taking timely action in 1988".

In the meantime, on 1 June 1990, the Applicant submitted his resignation, which was accepted with effect from 31 August 1990. Following a further exchange of correspondence, in which it was again suggested to the Applicant that he should appeal to the JAB, on 26 August 1991, the Applicant lodged an appeal with the JAB.

On 19 November 1992, the JAB adopted its report, having concluded that "under the terms of staff rule 111.2 (a) and (c), the appeal was not receivable". In a letter dated 23 November 1992, the Director of Personnel transmitted the JAB report to the Applicant and informed him that the Secretary-General had decided "to maintain the contested decision and to take no further action on your case".

On 11 October 1993, the Applicant filed with the Tribunal the application referred to earlier.

Whereas the Applicant's principal contentions are:

1. The Applicant was not aware of his exact age and, when asked for his birth date when first employed, gave a rough estimate. Only when requested by the ECA Administration to produce a birth certificate did the Applicant obtain one, issued on the basis of the testimony of three witnesses.

2. The Administration should recognize the Applicant's birth certificate so that he may receive the corresponding pension benefits, and compensation for the time he served beyond retirement age.

Whereas the Respondent's principal contention is that the appeal is time-barred.

The Tribunal, having deliberated from 30 June to 28 July 1995, now pronounces the following judgement:

I. The Applicant entered the service of the United Nations Economic Commission for Africa in Addis Ababa in July 1964 as a Messenger. He was granted a regular appointment in 1968 and became a Documents Clerk in 1973. In 1974, he was promoted to the GS-4 level.

At the time of his appointment, he had not included in his file the birth certificate normally required, maintaining that it was not yet customary in his day for the Ethiopian Government to issue such documents. In his personnel file, the Applicant had nevertheless indicated that he was born on 3 October 1941. Asked later to furnish a certificate of birth, the Applicant travelled to his native village, where he obtained court-certified statements from three sworn witnesses that his date of birth was 4 December 1927. On that basis, on 16 April 1987, he secured from the City Council of Addis Ababa a certificate indicating that his date of birth was 4 December 1927. On 21 April 1987, the Applicant submitted a certificate that the Administration refused to take into consideration, on the basis of information circular ST/ECA/IC/84/2 of 17 January 1984, which stipulates:

> "... that Personnel Officers should not agree to requests for change of date of birth unless the request was submitted within two years after the date of appointment and within six months after discovery of the error ..."

II. The Applicant challenged this decision to deny his request by applying to the Joint Appeals Board (JAB), which declared that his appeal was time-barred under the terms of staff rule 111.2 (a) and (c), according to which a staff member must appeal against an administrative decision within two months from the date the staff member received notification of the decision in writing.

The Administration endorsed the JAB's view. At that point, the Applicant, who had in the meantime resigned with effect from 31 August 1990, submitted an application to the Tribunal.

III. In his application, the Applicant maintains, first, that the Administration should have recognized the birth certificate he had produced. He adds that, in view of his age, he should receive all entitlements to pension benefits and to payments of other allowances or of compensation for injury sustained. Lastly, he asks for payment of remuneration in compensation for two years and nine months of additional service beyond the compulsory retirement age of 60.

The Respondent requests dismissal of this appeal and concludes that the Applicant should not be granted any compensation. The Respondent contends in that connection that the Applicant had not made an appeal against the decision to refuse to modify his date of birth within the two-month time-limit set out in staff rule 111.2 (a). Consequently, the Applicant must be considered time-barred and can take no further action.

IV. It appears from the file first, that in his letter dated 18 April 1988, the Applicant lodged an appeal with the Secretary-General against the contested decision, but that the appeal was rejected on 10 May 1988. The Applicant did not appeal this decision.

Almost two years later, on 6 February 1990, the Applicant renewed his request, addressing it to the Assistant Secretary-General, Office of Human Resources Management. In a reply dated 7 September 1990, the Director of the Staff Administration and Training Division, referring to the letter of 10 May 1988, confirmed its contents. On 14 June 1991, the Applicant again wrote to the Secretary-General. On 26 July 1991, the Office of Human Resources Management answered the Applicant, recalling once again that his appeal had already been rejected.

The Tribunal considers that this reply cannot be deemed to be a new administrative decision. It simply reiterates the previous rejection.

V. The Tribunal finds that the Applicant did not lodge the appeal against the decision taken on 10 May 1988 within the stipulated time-limit. It follows that his application must be declared not receivable.

(Signatures)

Luis de POSADAS MONTERO
Vice-President, presiding

Mikuin Leliel BALANDA
Member

Hubert THIERRY
Member

Geneva, 28 July 1995

R. Maria VICIEN-MILBURN
Executive Secretary